

Appendix F1

Memorandum Of Understanding Between Maryland DNR and Maryland-National Capital Park and Planning Commission Regarding Patuxent River Park and NERRS July 17, 1990

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") made this 17th day of July, 1990 by and between the Maryland Department of Natural Resources ("Department"), having an address at 580 Taylor Avenue, Tawes State Office Building, Annapolis, Maryland 21401 and the Maryland-National Capital Park and Planning Commission ("MNCPPC"), having an address at 6600 Kenilworth Avenue, Riverdale, Maryland 20737.

RECITALS

WHEREAS, MNCPPC owns and administers the Patuxent River Park Jug Bay Natural Area ("JBNA"), located in Prince George's County, Maryland, which is comprised of valuable nontidal and tidal fresh wetlands and uplands along the Patuxent River and is in need of long-term protection; and

WHEREAS, JBNA has in place educational and interpretive programs that contribute to a better understanding of estuarine systems; and

WHEREAS, the Department, through its Tidewater Administration, is the lead agency for the Chesapeake Bay National Estuarine Research Reserve in Maryland (the "Reserve"); and

WHEREAS, the federally mandated goals of the National Estuarine Research Reserve System ("NERRS") are to:

- (1) Ensure a stable environment for research through long-term protection of estuarine reserve resources;
- (2) Address coastal management issues identified as significant through coordinated estuarine research within NERRS;
- (3) Enhance public awareness and understanding of the estuarine environment and provide suitable opportunities for public education and interpretation;
- (4) Promote federal, state, public and private use of one or more reserves within NERRS when such entities conduct estuarine research; and
- (5) Conduct and coordinate estuarine research within NERRS, gathering and making available information necessary for improved understanding and management of estuarine areas; and

WHEREAS, that portion of JBNA outlined in red on the map which is attached to this MOU as Appendix A which shall be called the Black Walnut Creek Area ("BWCA") for the purposes of this document

has been proposed for designation (along with Anne Arundel County's Jug Bay Wetlands Sanctuary) by the National Oceanic and Atmospheric Administration (NOAA) as the Jug Bay component of the Reserve; and

WHEREAS, the Department and MNCPPC agree that the current management of BWCA is compatible with the NERRS goals and that BWCA can benefit from participation in NERRS and desire to enter into this MOU to govern the incorporation of BWCA into the Reserve;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Department and MNCPPC do hereby agree as follows:

ARTICLE I: Reserve Boundary

The Chesapeake Bay National Estuarine Research Reserve in Maryland's Jug Bay component will include that portion of JBNA outlined in red on the map which is attached to this MOU as Appendix A and will be referred to throughout this document as BWCA. The open water of Jug Bay will remain under State ownership and regulation and is not affected by this MOU. Additional acreage of JBNA may be included in the Reserve at a later date upon approval by MNCPPC, the Department, and NOAA.

It is understood and agreed that the Reserve shall be identified at both its boundaries and main entrance by the placement of a sign(s) which will be in keeping with the natural appearance of Jug Bay. The design will be agreed to by the Site Manager (JBNA Nature Facility Manager) and the Reserve Manager, and will be approved by NOAA.

ARTICLE II: Management Plan

There shall be a management plan ("Management Plan") for the Reserve, which shall describe a framework for conducting research and educational programs and protecting natural areas and resources. The Management Plan shall be developed by the Department's Estuarine Research Reserve staff and reviewed and adopted by MNCPPC, the Department and NOAA. The Management Plan will also be reviewed by the Jug Bay management plan advisory committee, the Otter Point Creek management plan advisory committee, the Monie Bay site advisory committee, and the Reserve management plan advisory committee. The Management Plan shall not take effect with respect to BWCA without the approval of MNCPPC, the Department and NOAA. The Management Plan shall be reviewed and revised, if appropriate, every five years. Revisions pertaining to the BWCA property shall become effective only with the approval of MNCPPC, the Department and NOAA.

ARTICLE III: Title and Use of the BWCA Property

Title to BWCA will remain with MNCPPC. BWCA will be protected in perpetuity as a natural area, and will be used as described in the Management Plan, i.e. it will be used for research, monitoring, education and interpretation with the ultimate goal of improved management of estuarine systems in Maryland and throughout the United States.

Multiple uses of BWCA are encouraged to the extent that such uses are compatible with the goals of the Reserve and of NERRS. BWCA will continue to be managed to facilitate ecological research, monitoring, education, interpretation, and compatible recreational uses. Uses and/or levels of use which result in significant, long-term damage to the natural processes or resources of the Reserve shall be prohibited.

IV. PROHIBITED AND RESTRICTED ACTIVITIES

The following activities will be prohibited or restricted within the Reserve:

- A. Industrial or commercial activities, except for commercial fishing in State waters as regulated by the Department.
- B. Display of billboards, signs or advertisements in, on or over the Reserve, except (1) to identify the Reserve; (2) to advertise the educational and naturalistic uses of the Reserve; (3) to commemorate the history of the Reserve, its recognition under State or federal historical registers; or (4) as needed for educational, interpretive, research, or monitoring programs. Signs shall not damage living trees and shall be placed in accordance with applicable local regulations.
- C. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Reserve, except that soil, rock, other earth materials, vegetative matter or compost may be placed as may be reasonably necessary for the construction and/or maintenance of permitted structures and accesses.
- D. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, petroleum and other materials, except for (1) the purpose of combatting erosion or flooding, or (2) the construction and/or maintenance of permitted structures, accesses and wildlife habitat.
- E. Diking, draining, filling or removal of wetlands, except for the purpose of (1) creating and maintaining silt basins, runoff ponds, or other conservation measures.

- F. No building, facility or other structure, shall be constructed on the Reserve after the date of this MOU without express written approval from NOAA, the Department and MNCPPC, except (1) temporary structures designed, constructed and utilized in connection with the scientific, naturalistic, and educational uses of the Reserve may be constructed with MNCPPC approval, (2) permanent boardwalks, observation decks, or elevated walkways may be constructed with MNCPPC approval, and (3) improvements, alterations, and expansions to existing structures (including the boat launch and pier) may be made with MNCPPC approval. All construction must comply with applicable county, state and federal regulations.
- G. Within BWCA, MNCPPC shall maintain a vegetative buffer strip along Jug Bay. The width of the buffer strip shall be a minimum of 100 feet (or as determined by applicable law requiring a larger buffer) along Jug Bay, except as may be necessary for (1) erosion control; (2) wildlife management; (3) water dependent educational or research related uses and associated structures; (4) hunting, fishing, or trapping; or (5) access to the water. Manure, road salt, and compost shall not be stored within one hundred (100) feet of streams or Jug Bay shorelines. Pesticides, insecticides, herbicides or fertilizers shall not be used or deposited within one hundred (100) feet of streams or Jug Bay shorelines, except for the purpose of controlling phragmites and other noxious weeds through methods approved by the Department and in accordance with NERRS policies. Consistent with state policy, there shall be no use of herbicides on emergent or submerged aquatic vegetation.
- H. MNCPPC shall exercise its duties so as to prevent or to minimize damage to water quality, air quality, land/soil stability and productivity, wildlife, scenic and cultural values, and the natural topographic and open-space character of the Reserve.

ARTICLE V: Facilities

The facilities at the Jug Bay Natural Area will remain the property of MNCPPC and will be used for Reserve purposes (e.g. research, monitoring, or education) in accordance with the Management Plan. Facilities, including boardwalks, built with federal or State Reserve moneys shall be the property of MNCPPC unless and until such time as this MOU is terminated and 15 CFR 921.21(e) deed language becomes operative.

ARTICLE VI: Operation and Maintenance of the Reserve

MNCPPC will continue to fund, operate, staff, and maintain BWCA including the portion within the Reserve boundaries. As appropriate, these funds may be used to match State or NOAA funds toward facility, equipment and program enhancements at BWCA as delineated in the Management Plan.

ARTICLE VII: State-MNCPPC Roles in Reserve Management

A Nature Facility Program Manager is presently employed by MNCPPC and acts as the manager of JBNA. This person is responsible for day-to-day planning and operation of the property and development of site use policies. The Nature Facility Program Manager will become the Site Manager of the BWCA portion of the Jug Bay component of the Reserve, and will work with the state Reserve Program Manager ("Reserve Manager") and the Jug Bay Wetlands Sanctuary Supervisor/Naturalist ("JBWS Site Manager") in Anne Arundel County to coordinate use of BWCA as a Reserve component. The JBNA Nature Facility Manager will sit on both the Site Advisory Committee and the system-wide Reserve Advisory Committee.

MNCPPC and the JBNA Nature Facility Manager shall provide information as needed to comply with auditing, accounting, and reporting requirements of NOAA and the State. (See Appendix B.)

The Reserve Manager is employed by the Department and coordinates administrative functions and the research and education programs among the multiple sites of the Reserve, and acts as liaison with NOAA and other states' National Estuarine Research Reserve programs. Reserve employees employed by the Department, including but not limited to, the Reserve Manager, an Education Coordinator, a Research Coordinator, and a Volunteer Coordinator, will coordinate with the Nature Facility Manager and other MNCPPC employees, but will not have the authority to direct or supervise MNCPPC employees, except as authorized by the Nature Facility Manager for specific projects.

MNCPPC and the Nature Facility Manager shall administer and manage BWCA in accordance with the goals of the Reserve as set out in the Management Plan.

ARTICLE VIII. Maryland Saved Harmless

MNCPPC will be responsible for all damage to life and property due to its negligent activities, or those of its agents, employees, or subcontractors, in connection with its performance under this MOU.

MNCPPC shall indemnify and save harmless and defend the State of Maryland and all of its representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any

work performed negligently under this MOU, either by MNCPPC or any subcontractor, or their employees, agents, or representatives. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the Department.

ARTICLE IX: Dispute Resolution

The Department and MNCPPC both reserve the right to advise the other party of its concerns over the actions of the Department or MNCPPC which are not consistent with the NERRS goals, this MOU, and the specific goals of the Reserve as delineated in the Management Plan.

In the event of a dispute between the Department and MNCPPC concerning the management, uses, or operation of the Reserve, the following steps shall be taken:

- 1) Both parties shall make a good faith effort to resolve the dispute by themselves for ninety (90) days;
- 2) If after ninety (90) days the dispute has not been resolved, either party may request, in writing, the designation of a mediator qualified in dispute resolution which must be approved by both parties. This person will aid in resolving the dispute in a manner consistent with the Reserve and NERRS goals. The mediator will work to develop a resolution acceptable to both parties but shall not have the power to make a binding decision. The cost of the mediator shall be shared equally between MNCPPC and the Department.
- 3) If such dispute cannot be solved through the mediation process, the dispute shall be resolved through whatever remedies are appropriate under applicable law or under the terms of this MOU. The parties agree to inform NOAA at each stage of the dispute resolution process.

Both parties shall make a good faith effort to resolve the dispute throughout the dispute resolution process.

ARTICLE X: Termination of the MOU

A. Effective date. This MOU shall become effective on the date BWCA is designated as a part of the Reserve.

B. Complete understanding. This MOU represents the complete understanding between the parties and supersedes all prior negotiations, representations, guaranties, warranties, promises, statement or agreements, either written or oral, between the parties.

C. Termination. This MOU shall continue in effect for a period of ninety-nine (99) years, unless amended, renewed or terminated. This MOU may be terminated with the consent of all its signatories

by execution of a written termination agreement with an effective date 60 days from the date of execution by all signatories. The unilateral withdrawal of either the Department or MNCPPC may occur upon one year's prior written notice to the other party. A decision to terminate the MOU on the part of MNCPPC shall be made by a vote of the Prince George's County planning board. A decision on the part of the State to terminate the MOU requires the approval of the Secretary of the Department.

If this MOU is terminated, it is understood and agreed that designation of BWCA as a component of the Reserve will be withdrawn and that the Federal Office of Management and Budget ("OMB") will take any appropriate action with respect to grant funds as may be indicated by its regulations. Compensation for State or federal funds appropriated to the Reserve for this component shall be made in accordance with CFR 921.21 (e) and applicable OMB circulars. (See Appendix B.)

D. Amendment. Both parties agree to inform NOAA of any proposed amendments to the MOU. MNCPPC and the Department will consider NOAA comments prior to approval of any amendments. Amendments may be made to this MOU with the prior approval of both MNCPPC and the Department. Amendments shall be in writing and shall take effect upon execution by all signatories to this MOU.

E. Applicable law. This MOU shall be given effect and construed by application of the law of Maryland, and any action or proceeding arising hereunder shall be brought in the courts of Maryland.

F. Exhibits. Each writing or plat referred to as being attached as an exhibit is hereby made a part of this MOU.

Signed,

Witness

MARYLAND DEPARTMENT OF NATURAL RESOURCES

[Handwritten signature]

[Handwritten signature] 7/14/90
Torrey C. Brown, Secretary

MARYLAND-NATIONAL CAPITAL PARKS AND PLANNING COMMISSION

[Handwritten signature]
A. Edward Navarre
Secretary-Treasurer

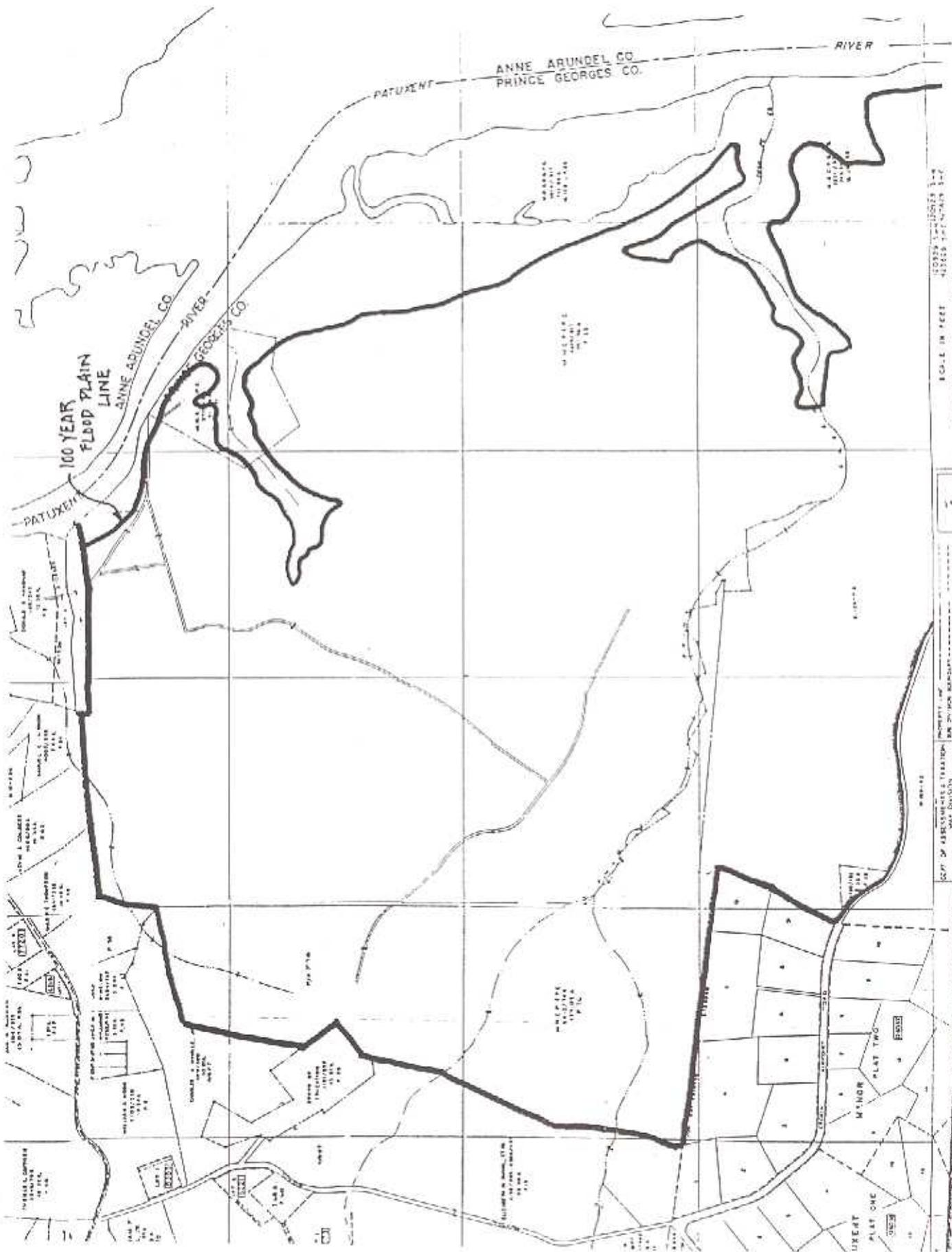
[Handwritten signature]
John F. Downs, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

7

[Handwritten signature]
MNCPPC L.g.J. Department

Date 7/17/90



PROPERTY OF
 U.S. ARMY CORPS OF ENGINEERS
 WASHINGTON, D.C.

SCALE IN FEET

1

PROPERTY OF
 U.S. ARMY CORPS OF ENGINEERS
 WASHINGTON, D.C.

PROPERTY OF
 U.S. ARMY CORPS OF ENGINEERS
 WASHINGTON, D.C.